

City of Alexandria, Virginia

2-27-07

MEMORANDUM

DATE: FEBRUARY 23, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: CONSIDERATION OF MEMORANDUM OF UNDERSTANDING FOR
THE POTOMAC YARD FIRE STATION/HOUSING PROJECT

ISSUE: Memorandum of Understanding (MOU) for the development of the proposed fire station and affordable/workforce housing project in Potomac Yard Landbay G.

RECOMMENDATION: That City Council authorize the City Manager to execute the Memorandum of Understanding (current working draft attached) once the parties have agreed on the final version of the MOU, and no later than the March 9 deadline for submission of an application for Low Income Housing Tax Credits.

DISCUSSION: On February 24, Council is scheduled to hold a public hearing and take action on a Development Special Use Permit (DSUP) for the development of a structure to include a fire station, 64 units of affordable and workforce housing, and a small retail component. The land for the fire station is being donated by the developer, Potomac Yard Development, LLC (PYDLLC). As proposed, the affordable/workforce housing component, to be known as The Station at Potomac Yard, would be owned and operated by a non-profit organization to be designated by the City. Staff has been working with the Alexandria Housing Development Corporation (AHDC) in that capacity.

The desired primary funding source for the affordable housing project is the Low Income Housing Tax Credit program, for which applications are due to the Virginia Housing Development Authority (VHDA) on March 9. AHDC has created a limited partnership, Alexandria Potomac Station Limited Partnership (APSLP), as the tax credit entity that will apply for the tax credits and own and operate the housing component. Negotiations among the City, PYDLLC, and APSLP on an MOU for the development of the project are nearly complete. Because the MOU will be the primary document establishing APSLP's right to develop and own the housing component, it must be executed prior to the March 9 tax credit application is submitted. Therefore, staff recommends that Council authorize the City Manager to execute the MOU.

The MOU is intended to establish the following:

- Conditions to facilitate tax credit application including formation of partnership and condominium regimes;
- Definition of each partner's financial and "bricks and mortar" responsibilities, ownership interests, and liabilities;
- Distinction between the City's role as developer and its role as regulatory agency; and
- A contingency plan if the housing component is not able to proceed due to financing or other reasons.

With regard to the ownership structure, as currently envisioned in the draft MOU, the parcel being proffered by PYDLLC will be conveyed by PYDLLC to a to-be-formed limited liability company ("LLC") managed and majority-held by the City (PYDLLC and APSLP will be minority members). The LLC will enter into agreements with the City and APSLP to convey the fire station (and related parking) and the affordable/work force housing (and related parking) to the City and the AHDC tax credit entity, respectively, which obligation to convey will be secured by appropriate liens or similar interests against the parcel.

The parties have reached agreement on most elements of the MOU, and staff is confident that the remaining outstanding issues will be resolved in advance of the tax credit application deadline. We expect that the attached draft will change somewhat as a result of revisions submitted by AHDC late on February 22. We will provide Council with a revised draft prior to the February 27 Council meeting.

FISCAL IMPACT: The City will contribute \$1 million for the Fire Station construction

ATTACHMENT: Draft Memorandum of Understanding

STAFF:

Michele Evans, Deputy City Manager
Roderick B. Williams, Assistant City Attorney
Jeremy McPike, Chief, Capital Projects, General Services
Jeffrey Farner, Chief, Development, Planning and Zoning
Amy Tarce, Principal Planner, Planning and Zoning
Al Cox, Code Enforcement Architect
Mildrilyn Stephens Davis, Director, Office of Housing
Helen McIlvaine, Deputy Director, Office of Housing
John North, Battalion Chief, Fire Department
Ron Kagawa, Urban Planner/Landscape Architect, Recreation Parks and Cultural Activities

PYD REVISION 2/22/07
With APSLP revisions 2/23

**AGREEMENT FOR DEVELOPMENT OF
FIRE STATION #209 AND AFFORDABLE/WORK FORCE HOUSING
AND FOR THE CREATION OF
A LIMITED LIABILITY COMPANY
FOR DEVELOPMENT OF
FIRE STATION #209 AND AFFORDABLE/WORK FORCE HOUSING**

This Agreement for Construction of Fire Station #209 and Affordable/Work Force Housing and for the Creation of a Limited Liability Company for Development of Fire Station #209 and Affordable/Work Force Housing (this "**Agreement**") is made effective the _____ day of February 2007, between **THE CITY OF ALEXANDRIA, VIRGINIA**, a municipal corporation of Virginia ("**City**"), **ALEXANDRIA POTOMAC STATION LIMITED PARTNERSHIP**, a Virginia limited partnership ("**APSLP**"), and **POTOMAC YARD DEVELOPMENT LLC**, a Delaware limited liability company ("**PYDLLC**") (the City, APSLP and PYDLLC herein collectively the "**Parties**").

RECITALS:

R-1 PYDLLC is the owner of real property located in the City of Alexandria, Virginia containing approximately 130.4 acres of land and generally known as "**Potomac Yard**" which has been divided into Parcels 501-523, inclusive, Potomac Yard Alexandria, by deed and plat duly recorded among the land records of the City as Instrument #060033375 et seq (the "**Recorded Master Potomac Yard Plat**").

R-2 PYDLLC is developing Potomac Yard, and such development is subject to the conditions of approval required by City Council in accordance with the Coordinated Development District Alternative Concept Plan (CDD #99-001) (the "**CDD Plan**"), associated CDD Plan Conditions, Potomac Yard Urban Design Guidelines, Memorandum of Understanding dated February 14, 2005, and associated zoning approvals and agreements with the City (herein collectively the "**Approvals**").

R-3 APSLP has been formed and is sponsored by the Alexandria Housing Development Corporation, a not-for-profit Virginia corporation ("**AHDC**"), to develop, own and operate the Affordable/Work Force Housing (as defined below).

R-4 PYDLLC, APSLP and the City have agreed, subject to the terms and provisions contained herein, that PYDLLC will, for the benefit of the City, in connection with the Approvals, convey to a limited liability company to be created as described herein (the "**Company**") approximately 37,600 square feet of Parcel 503, Potomac Yard Alexandria (the "**Community Facility Parcel**"), as generally depicted on the preliminary subdivision plat prepared by Christopher Consultants, dated January 26, 2007, (the

"Subdivision Plat") and shown thereon as Parcel 503-B. Upon recordation of the final subdivision plat (**"Final Subdivision Plat"**) for Parcel 503, Potomac Yard, the Community Facility Parcel shall be transferred to the Company.

R-5 The Company shall cause the improvement of the Community Facility Parcel by the construction of (i) a four-bay municipal fire station (the **"Fire Station"**), (ii) approximately sixty-four (64) affordable and work force rental housing units above the Fire Station and retail space (the **"Affordable/Work Force Housing"**), and (iii) related community space and a two-level underground parking garage (the **"Parking/Community Space"**) (collectively the **"Community Facility"**).

R-6 PYDLLC shall contribute, for the benefit of the City, in connection with the Approvals, (i) Six Million Dollars (\$6,000,000.00) (**"PYDLLC ADU Contribution"**) to the City toward the costs of construction of the Affordable/Work Force Housing in partial satisfaction of its voluntary affordable housing contribution for the entirety of Potomac Yard, which the City will grant to AHDC for purposes of its capital contribution (directly or through a wholly-owned subsidiary) to APSLP, and (ii) Six Million Dollars (\$6,000,000.00), plus up to Six Hundred Thousand Dollars (\$600,000.00) in contingency costs, to the Company on behalf of the City toward costs of construction of the Fire Station as hereinafter set forth (**"PYDLLC Fire Station Contribution"**).

R-7 The City shall pay the costs of the fourth bay of the Fire Station, the costs associated with sustainable design features and all additional costs of development and construction of the Fire Station not covered by the PYDLLC Fire Station Contribution, which City payment is expected to be in the approximate amount of One Million Dollars (\$1,000,000.00) (**"City Fire Station Contribution"**). APSLP shall pay the costs applicable to the development and construction of the Affordable/Work Force Housing in excess of the PYDLLC ADU Contribution. APSLP and the City shall share the costs of development and construction of the Parking/Community Space in a manner to be determined.

R-8 PYDLLC, at its cost and expense and not as a credit to its contributions to the Company, shall (i) develop the Community Facility Parcel to include rough clearing and grading to base grade as more particularly described in Section 5 below, construction of all streetscape related infrastructure on the perimeter of the Community Facility Parcel, and installation of storm water facilities and utilities to the property line of the Community Facility Parcel; (ii) install Main Street, East Glebe Road and Maskel Road as shown on the Subdivision Plat and provide emergency vehicle easements in Landbay G in the locations shown on the Recorded Master Potomac Yard Plat ; and (iii) construct improvements to the approximately 9,100 square feet of Parcel 503 that is being planned as a publicly accessible open space (the **"Open Space"**), as shown on the Subdivision Plat.

R-9 The Parties shall share the costs of construction of the Service Drive (as hereinafter defined) to be constructed by the Company with PYDLLC paying one-half of

such costs (a portion of which is included in the PYDLLC Fire Station Contribution) and the balance being paid by the other Parties.

R-10 The Company shall enter into a Construction Contract (as defined below), architect agreement and other agreements to build the Community Facility. APSLP and the City will provide the funds necessary to develop and construct the Community Facility as described in R-6 and R-7 above. The Construction Contract will acknowledge the allocation of costs between APSLP and the City.

R-11 At the earliest possible opportunity under applicable statutes, anticipated to be upon the substantial completion of the Community Facility, the Company shall create a condominium regime on the Community Facility Parcel (the "**Community Facility Condominium**") and shall convey (i) the Fire Station and associated parking (the "**Fire Station Unit**") to the City and (ii) the Affordable/Workforce Housing, including the retail space, and associated parking (the "**Affordable/Workforce Housing Unit**") to APSLP, each together with an undivided interest in the condominium common elements of the Community Facility Parcel. Upon such conveyance, APSLP shall assume all remaining obligations to develop and construct the Housing Unit, and the City shall assume all remaining obligations to develop and construct the Fire Station Unit.

R-12 The Company shall upon completion of construction thereof, convey the Affordable/Work Force Housing Unit including associated parking to APSLP.

R-13 The City is acting in the Agreement pursuant to its role as an owner, whether prospective or current, direct or indirect, of an interest in the Community Facility Parcel, and is not acting in its regulatory capacity, unless otherwise indicated herein, whether specifically or by context. An "interest" as the term is used herein may be a fee simple interest or any other interest, including but not limited to an interest secured by the Community Facility Parcel. The City's powers in its regulatory capacity are not affected or governed by this Agreement.

AGREEMENTS

Now, therefore, for and in consideration of the Recitals set forth above, which are fully incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. THE COMPANY

A. The Company shall be a Virginia limited liability company and shall be initially composed of the following partners: APSLP, the City and PYDLLC. The Company shall exist for the limited purpose of causing the improvement of the Community Facility Parcel by the development and construction of the Community Facility, to include the Fire Station, the Affordable/Work Force Housing, and related community space, the "**Service Drive**" as shown on the Community Facility

Preliminary Plan (defined below), and a two-level underground parking garage; to create the Community Facility Condominium and transfer the Fire Station Unit to the City and the Affordable/Work Force Housing Unit to APSLP; and thereafter for the winding-up of its affairs. The Company's managing entity shall be the City. APSLP, the City and PYD LLC shall own their respective interests in the Company in the following proportions: the City, 99.98% (representing, among other things, the value of the Community Facility Parcel, conveyed for the benefit of the City); PYD LLC, 0.01%; and APSLP, 0.01%.

B. An operating agreement governing the operations of the Company (the "**Operating Agreement**") shall be reasonably acceptable to all the Parties and it shall expressly incorporate by reference the provisions of this Agreement, which shall be binding on the Company. The Company shall have the obligation (i) to hire a third party construction management company selected by the City, at the City's cost, to manage construction of the Fire Station (the "**Construction Manager**"), and (ii) to develop and construct the Community Facility as set forth above, and (iii) to convey the Fire Station Unit to the City and the Affordable/Work Force Housing Unit to APSLP as set forth above, which obligations shall, to the extent provided for herein and as otherwise necessary or requested by the City, be evidenced by recordation of an appropriate covenant among the land records of the City.

C. The formation of the Company and the Operating Agreement shall be undertaken by APSLP, and the Company shall have been created no later than March 9, 2007, in order that (i) the Community Facility Parcel may be promptly conveyed to the Company upon recordation of the Final Subdivision Plat and (ii) the Company can enter into agreements to convey the Affordable/Work Force Housing Unit to APSLP and the Fire Station Unit to the City.

2. CREATION AND CONVEYANCE OF THE COMMUNITY FACILITY PARCEL AND THE OPEN SPACE

A. A "Preliminary Site Plan for Fire Station #209, Potomac Yard Alexandria" (the "**Community Facility Preliminary Plan**"), including the Subdivision Plat and applicable conditions, was approved by the Alexandria City Council on February 24, 2007. The intended Community Facility Parcel appears as proposed Parcel 503-B on the Subdivision Plat and the intended Open Space appears as proposed Parcel 503-C on the Subdivision Plat. The Parties agree and acknowledge that the exact location and boundaries of both parcels as currently depicted on the Subdivision Plat may be subject to minor changes in connection with the processing of the final subdivision plan.

B. Within five (5) business days of the approval of the development special use permit and other applicable approvals by City Council, PYD LLC shall submit the final subdivision plat for Parcel 503, Potomac Yard for review and approval by the applicable City regulatory departments. Upon final approval of the Subdivision Plan and Subdivision Plat by applicable City regulatory departments, PYD LLC shall record the Final Subdivision Plat among the City's land records and promptly thereafter convey the

Community Facility Parcel, as finally configured on the Final Subdivision Plat, to the Company by special warranty deed.

C. Contemporaneously with conveyance of the Community Facility Parcel, as finally configured on the recorded Final Subdivision Plat, to the Company, the Company shall:

i. enter into a contract with the City for the transfer of the Fire Station Unit to the City and contemporaneously grant a first priority deed of trust or other covenant or agreement acceptable to the City, of the Community Facility Parcel, for the benefit of the City, to secure the City's right to acquire the Fire Station Unit (consideration given by the City therefor shall be deemed to include, but not necessarily limited to, the value to the City of the PYDLLC Fire Station Contribution and the City Fire Station Contribution); and

ii. enter into a contract with APSLP for the transfer of the Affordable/Work Force Housing Unit to the APSLP and contemporaneously grant a deed of trust, or other covenant or agreement acceptable to APSLP, of the Community Facility Parcel, subordinate only to the City's deed of trust above, for the benefit of APSLP, to secure APSLP's right to purchase the Affordable/Work Force Housing Unit (consideration given by APSLP therefore shall be deemed to include, but not necessarily limited to, the value of the PYDLLC ADU Contribution and additional APSLP contribution to construction costs).

As soon as legally possible, the Company shall create the Community Facility Condominium on the Community Facility Parcel, said condominium to be comprised of two units, with (i) the Fire Station Unit as "Unit A" and (ii) the Housing Unit as "Unit B". The Company may elect to create the Community Facility Condominium to include one or more garage condominium units also located on the Community Facility Parcel, such garage unit(s) encompassing the related parking for the Fire Station Unit and the Affordable/Work Force Housing Unit, in lieu of such related parking being included as limited common elements of the Fire Station Unit and the Affordable/Work Force Housing Unit. If the Company creates the Community Facility Condominium to include such garage condominium unit(s), the Company shall include the related parking for the Fire Station Unit and the Affordable/Work Force Housing Unit represented by such garage unit(s) in the contracts and deeds of trust required by this section 2.C. In addition, APSLP may elect to cause the Company to divide the Affordable/Work Force Housing Unit into two condominium units – one for the rental housing units and associated parking and one for the retail space and associated parking.

D. The City agrees and acknowledges that the approximately 9,100 square feet of Open Space in Parcel 503 shall be part of the open space for Landbay G required in the approved Potomac Yard CDD Concept Plan and Urban Design Guidelines. The final area dimension of the Open Space shall be verified through the Final Subdivision Plat. Contemporaneously with recordation of the Final Subdivision Plat, PYDLLC shall convey to the City a temporary easement over the Open Space for its use as a staging area

during construction of the Community Facility; provided that such easement shall be terminable by PYDLLC, subject to the provisions of Section 5.C below, when PYDLLC begins improvements in the Open Space. Contemporaneously with recordation of an easement plat for the Community Facility Parcel and prior to final site plan approval, the Company shall convey to the City a perpetual public access easement on the Open Space for its public use as open space.

E. The Community Facility Parcel shall not be encumbered with the Reciprocal Easement Agreement (“**REA**”) that PYDLLC is recording against the balance of Potomac Yard and shall not be bound by any obligation to pay for common area expenses that arise under the REA. However, provided that the Community Facility Parcel’s proportionate payment obligation for maintenance is 0%, the Company shall join in the proposed Stormwater Pond Easement and Maintenance Agreement which shall encumber the Community Facility Parcel. The Company acknowledges that its Units will be subject to the requirements of the Approvals including those relating to transportation management. The Company further agrees to enter into a separate reciprocal easement and maintenance agreement pertaining to the Service Drive in which the Community Facility Parcel agrees to pay one-half the maintenance costs of the Service Drive.

3. DESIGN OF COMMUNITY FACILITY PARCEL AND THE COMMUNITY FACILITY

A. The design of the Community Facility Parcel and the Community Facility shall be consistent with the Community Facility Preliminary Plan and its associated Conditions, and of Condition #31 of DSUP #2004-0048, Landbay H & Partial I, Potomac Yard, and in accordance to all applicable City guidelines and ordinances. All design documents pertaining to the Fire Station are subject to City review and approval at each design phase as provided below.

B. PYDLLC has retained the following contractors for services relating to designing, engineering, rezoning and site planning the Community Facility Parcel and the Community Facility (the “**Design and Engineering Consultants**”), and the City and APSLP consent to the use of these consultants:

christopher consultants, civil engineers
Land Design, land planning and landscape architecture
Walsh, Colucci, Lubeley, Emrich & Walsh, attorneys
Land, Clark, Carroll, Mendelson & Blair, attorneys
Rust Orling, architects
LeMay Erickson, architects
ECS-Mid Atlantic LLC, geotechnical and environmental
Thunderbird Archeology, a division of Wetlands Studies & Solutions,
archeology
Wells & Associates, transportation
Whiting-Turner, construction manager-at-risk services

The Parties may agree to the substitution of one or more of the Design and Engineering Consultants should such substitution become necessary and may agree to the inclusion of additional consultants, who upon such agreement would be included within the definition of Design and Engineering Consultants.

C. As requested by the Company, and to the extent permitted by the respective Design and Engineering Consultants, PYDLLC shall assign to the Company, without representation or warranty of any type, all right, title and interest in and to its contracts with the Design and Engineering Consultants.

D. Prior to creation of the Company, PYDLLC has and shall continue to coordinate with the City and APSLP in the preparation of the design of and budget for the Community Facility. The Construction Manager shall be the point of contact with the City and shall be responsible for coordinating with the user agencies. PYDLLC and the Company shall in all instances be authorized to rely on approvals granted by the Construction Manager. PYDLLC and/or the General Contractor (as hereinafter defined) shall submit design and budget documents for the Community Facility to the Construction Manager for City and APSLP review and approval consistent with the provisions of this Agreement. The Company shall address and as applicable incorporate all City and APSLP review comments at each design phase and shall provide a statement of probable construction cost prepared by a mutually agreed upon independent, professional construction cost estimator at each design phase.

E. The Parties agree and acknowledge that an accounting to date (the "**Accounting**") and a preliminary budget (the "**Preliminary Budget**"), both showing expenditures for design, engineering, development and construction of the Community Facility, are attached hereto and incorporated herein as Exhibits A and B, respectively.

F. PYDLLC contemporaneously with negotiation of this Agreement has been authorized by the City to enter into a "**Construction Manager-At-Risk Contract**" with Whiting Turner. The statement of work for such contract is attached hereto as Exhibit C. The fees incurred by PYDLLC under the Construction Manager-At-Risk Contract and the fees assessed to and paid by PYDLLC to the Design and Engineering Consultants relative to work done on the Community Facility shall be credited to the PYDLLC Fire Station Contribution and the PYDLLC ADU Contribution as fairly allocated between the two contributions.

G. Notwithstanding the aforesaid, in the event that for any reason the Community Facility project is terminated through no fault of PYDLLC either prior to commencement of construction or after construction has commenced, then all sums incurred by PYDLLC under the Construction Manager-At-Risk Contract and under contracts with the Design and Engineering Consultants relative to work done on the Community Facility shall be credited to the PYDLLC ADU Contribution and the PYDLLC Fire Station Contribution in a manner to be allocated by the City.

4. REZONING AND SITE PLANNING THE COMMUNITY FACILITY PARCEL

A. PYDLLC and the City, with the consent and cooperation of APSLP, filed and processed the zoning and site planning applications required to permit construction of the Community Facility within Landbay G generally in accordance with the Community Facility Preliminary Plan, including without limitation a Master Plan amendment, amendment of the CDD Concept Plan to permit a community facility within Landbay G and additional density allocated expressly to the Community Facility Parcel, and a CDD Preliminary Site Plan including the Subdivision Plat and related Conditions. Any material change to either the Community Facility Preliminary Plan or the Subdivision Plat unless a condition(s) of approval by City Council shall require the express written approval of all Parties.

B. The City acknowledges and agrees that the Affordable/Work Force Housing units expected to be constructed on the Community Facility Parcel shall be additional "bonus" units to the maximum number of units (1927) permitted pursuant to the CDD Concept Plan, and that the Affordable/Work Force Housing shall not be deducted from the maximum number of residential units permitted by the approved CDD Concept Plan and applicable approvals. Similarly, any retail component included in the rezoning and site planning of the Community Facility Parcel shall not be deducted from the maximum amount of permitted retail by the CDD Concept Plan and applicable approvals.

5. DEVELOPMENT OF THE COMMUNITY FACILITY PARCEL
AND RELATED ROAD IMPROVEMENTS

A. PYDLLC shall contract with a development contractor selected by PYDLLC to do the following work on or around the Community Facility Parcel: clearing and grading to the existing grade prior to use of the Community Facility Parcel for stockpiling as such existing grade is shown on the 1999 topographic map of Potomac Yard prepared by Christopher consultants, earthwork, bringing utilities to the site, installing base paved public roads to the Community Facility Parcel (collectively the "Development Work"). PYDLLC shall bond and permit the Development Work.

B. The Company shall grant to PYDLLC, its agents and contractors the right to enter upon the Community Facility Parcel to undertake and complete the Development Work.

C. PYDLLC shall provide a construction staging area in Potomac Yard for the duration of construction of the Community Facility at no cost to the Company and shall provide temporary access for construction vehicles within Potomac Yard for the duration of the construction. The General Contractor shall coordinate with PYDLLC regarding construction vehicle routes, maintenance of the construction staging area, and other related construction staging activities, and PYDLLC shall have the right to reasonably regulate and control all such routes, areas and activities, including without limitation the right to re-route access and re-locate staging areas (after reasonable

advance notice), in order to limit interference with other development and construction activities within Potomac Yard.

6. CONSTRUCTION OF COMMUNITY FACILITY

A. Upon unappealable approval of the Preliminary site plans and plat for the Community Facility Parcel and the Community Facility, with associated conditions, and based on such plans and the final schematic plans for the Community Facility (collectively the "**Final Design Specifications**"), the Parties shall jointly select the general contractor for construction of the Community Facility (the "**General Contractor**"). The Company shall enter into a contract with the General Contractor for the work as outlined in the Final Design Specifications (the "**Construction Contract**"), which contract shall be approved in advance by the City and by APSLP. All consents and changes to the Construction Contract that will impact on the Fire Station shall be subject to advance written approval by the City, and all consents and changes to the Construction Contract that will impact the Affordable/Work Force Housing shall be subject to the advance written approval of APSLP.

B. The Company working with the Construction Manager and APSLP shall coordinate the preparation of all construction drawings and specifications, sheeting and shoring drawings and sheeting and shoring calculations for improvements to be constructed on the Community Facility Parcel (the "**Construction Documents**"). The City and APSLP shall be responsible for active involvement in the preparation of the Construction Documents and before commencing construction on the Community Facility Parcel, the Company shall submit to the City and APSLP for review and written approval, copies of all such Construction Documents. The City alone shall have approval rights over those portions of the Community Facility that are included in the Fire Station and associated parking areas. The City and APSLP shall have approval rights over those portions of the Community Facility that are included within the Affordable/Work Force Housing and associated community space and parking areas and those building elements that impact both the Fire Station and the Affordable/Work Force Housing. The City and APSLP shall review and provide comments or approval, in writing, to the General Contractor on all applicable Construction Documents in accordance with the following schedule:

A.	Preliminary drawings and design documents:	10 Business Days;
B.	Resubmittals of drawings and design documents	5 Business Days;
C.	Final Construction Documents and Specifications:	10 Business Days.

If the City or APSLP fails timely to inform the Company in writing of its approval or disapproval, then the Company may notify the City or APSLP, as applicable, in writing of such failure ("**Review Notice**"). If the City or APSLP, as applicable, fails to inform the Company in writing of its approval or disapproval within ten (10) Business Days after receipt of a Review Notice, then the non-responding party shall be deemed to have determined that such submission is approved. If the either the City or APSLP denies any submission, it shall specify the reasons for such denial in writing. If approval is denied, a

resubmittal for approval with all comments resolved shall be made to the City and APSLP. The City and APSLP will review any resubmittal within ten (10) Business Days, provided the resubmittal is accompanied by a written explanation of all changes included in the resubmittal. This action shall be repeated until written approval from the City and APSLP is obtained. Neither the City nor APSLP will arbitrarily or unreasonably withhold, condition or delay approval of the Construction Documents for the applicable improvements to be constructed on the Community Facility Parcel. After the City and APSLP have approved any Construction Documents, no changes shall be made thereto without first obtaining the City's and APSLP's written approval.

C. For so long as PYDLLC is diligently pursuing completion of its obligations under this Agreement and the Development Work that it has undertaken complies with applicable codes and the Approvals, then notwithstanding delays in construction of the Community Facility, such delays shall not result in the City withholding certificates of occupancy for residences or commercial buildings within Land Bays H & Partial I, Potomac Yard.

D. For purposes of this Agreement, the City is acting pursuant to its role as an owner, whether prospective or current, direct or indirect, of an interest in the Community Facility Parcel, and is not acting in its regulatory capacity. An "interest" as the term is used herein may be a fee simple interest or any other interest, including but not limited to an interest secured by the Community Facility Parcel. The City's powers in its regulatory capacity are not affected or governed by this Agreement and all such regulatory approvals that are required for any of the activities provided for or contemplated herein shall be required the same as if the City otherwise had no role in this Agreement and the activities provided for or contemplated herein.

7. PYDLLC CONTRIBUTION TO COSTS OF DEVELOPMENT AND CONSTRUCTION OF THE COMMUNITY FACILITY

A. For purposes of this Agreement "**Total Construction Cost**" of the Community Facility shall include all soft and hard costs related to the design, engineering, permitting, bonding, rezoning, site planning, and development of the Community Facility Parcel and construction of the Community Facility, including without limitation the costs of development and construction; installation of the surrounding landscape and hardscape on the Community Facility Parcel (but not on the Open Space); design; special consultant services; permitting; performance bonding; construction administration services; quality control inspections; any special inspections; independent cost estimating; utility connections and/or relocations and new services. The City will not collect any building permit fees for the Fire Station, but will collect building permit fees for the Affordable/Work Force Housing.

B. PYDLLC shall be responsible for the following components of the Total Construction Cost, and only such components: (i) the PYDLLC Fire Station Contribution which shall include as much as, but no more than a ten percent (10%) increase in the aggregate amount of the Fire Station budget items as shown in the Preliminary Budget if such increase/s arise out of unforeseen circumstances and only out of unforeseen

circumstances, and (ii) the PYDLLC ADU Contribution, which contribution shall be a credit to the Project-wide voluntary Affordable Dwelling Unit contribution of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00), and (iii) the difference between that portion of the total costs of the Service Drive included in the PYDLLC Fire Station Contribution and the amount that is 50% of the total costs of the Service Drive. Neither PYDLLC nor APSLP nor the Company shall have any obligation for any costs related to design changes in the Fire Station, for any costs related to a fourth truck bay for the Fire Station, for any LEED-related costs or for any other costs in excess of the Six Million Dollars (plus any applicable 10% increase) for the Fire Station. The City shall be responsible for all costs associated with development and construction of the Fire Station Unit in excess of the PYDLLC Fire Station Contribution. Neither PYDLLC nor the City shall have any obligation for payment of any portion of the Total Construction Cost relative to the Affordable/Work Force Housing Unit in excess of the PYDLLC ADU Contribution, and APSLP shall assume the obligation to pay all costs associated with the development and construction of the Affordable/Work Force Housing in excess of the PYDLLC ADU Contribution.

C. The PYDLLC Fire Station Contribution shall be payable to the Company on behalf of the City as work progresses on the Community Facility as follows: On or before the fifth business day of each month during the term of this Agreement in which there are invoices relative to Fire Station construction, the Construction Manager shall provide to PYDLLC copies of all invoices relative to the costs of constructing the Fire Station and included in the Preliminary Budget received by the Company during the preceding calendar month (the "PYDLLC Notice"). PYDLLC shall promptly pay such invoices that relate to the Fire Station and that are included in the PYDLLC Fire Station Budget up to the amount of the PYDLLC Fire Station Contribution; the City shall promptly pay all other invoices directly to the invoicing contractor. PYDLLC shall receive credits against its Fire Station Contribution as provided in Section 3.F above.

D. Upon commencement of construction of the Community Facility, PYDLLC shall deliver the PYDLLC ADU Contribution to the City in complete satisfaction of its obligations to pay any costs related to the Affordable/Work Force Housing. PYDLLC shall receive credits against its ADU Contribution as provided in Section 3.F above. The City shall grant the PYDLLC ADU Contribution in one or more installments to AHDC which will, in turn, contribute such funds (directly or through a wholly-owned subsidiary) to APSLP to pay costs (or enable the Company to pay costs) associated with the Affordable/Work Force Housing.

E. The Parties agree that it is their intent to build and construct the Community Facility as described herein; however the Parties acknowledge that such construction is dependent upon APSLP obtaining requisite financing. In the event that APSLP is unable to obtain a commitment for necessary financing on or before August 31, 2007, as that date may be extended by the City with the consent of PYDLLC, then the provisions of this Agreement shall be modified to provide generally that (i) the Community Facility Parcel shall be conveyed by the Company to the City; (ii) PYDLLC shall manage construction of the Fire Station using the PYDLLC Fire Station

Contribution and funds supplied by the City and otherwise in accordance with the provisions contained herein; and (iii) PYD LLC shall make the PYD LLC ADU Contribution (subject to the credits itemized in Section 7.D above) directly to the City upon commencement of construction of the Fire Station, in which case all provisions related to the Company (other than as necessary to wind up the affairs of the Company) and to construction of the Affordable/Work Force Housing herein shall be deleted. Further in the event that APSLP is unable to obtain a commitment for necessary financing on or before August 31, 2007, then APSLP shall (i) repay to the City all unused portions of the PYD LLC ADU Contribution which the City may have advanced to it; and (ii) withdraw from the Company. In the event the PYD LLC ADU Contribution is made in accordance with the provisions of this Section 7.E, PYD LLC agrees to continue to work with the City to explore opportunities for provision of affordable dwelling units within Potomac Yard.

8. THE OPEN SPACE

PYD LLC at its sole cost and expense and contemporaneously with completion of construction of the Community Facility shall improve the Open Space in accordance with the approved, unappealable final site plan for the Community Facility Parcel. Thereafter PYD LLC, or the Property Owners Association that PYD LLC creates for Potomac Yard when such Association assumes such responsibility in writing, shall maintain the Open Space, at its expense.

9. COOPERATION IN DEVELOPMENT OF POTOMAC YARD

A. PYD LLC, APSLP and the City, each individually and on behalf of the Company, agree and acknowledge that the development of the Community Facility Parcel, Land Bay G and the balance of Potomac Yard shall require on-going cooperation. The Parties each agree to cooperate with the other Parties, at no cost or expense to the cooperating party and at no premium to the requesting party, to facilitate the planning, development and construction of Potomac Yard Alexandria, in accordance with the Approvals.

B. PYD LLC, APSLP and the City hereby agree to execute, at the written request of the other party, all storm water, utility and customary construction easements and other instruments and documents reasonably necessary or desirable in connection with the development of the Community Facility Parcel or any other parcel/Landbay within Potomac Yard Alexandria, including without limitation, any easements required for the Development Work. A Party shall not be obligated to execute any such instruments if the same shall (i) unreasonably interfere with the development or intended use of its parcel or (ii) cause PYD LLC to be obligated to incur any financial obligations it would not otherwise incur in and under instruments and other documents executed pursuant to this Section. PYD LLC, the Company and the City shall cooperate reasonably with each other in identifying locations for easements on their respective properties for the benefit of the other party and shall use commercially reasonable efforts to obtain consents from their respective lenders to any and all such easements.

10. ADDITIONAL CONSIDERATION FOR COMMUNITY FACILITY PARCEL

The City agrees and acknowledges that the ladder truck access requirements approved for street and alley configurations in Landbay H, Potomac Yard, shall be acceptable for all other land bays within Potomac Yard, so long as (i) construction within the other land bays is consistent with the approved Design Guidelines and T&ES access requirements and (ii) all structures contain sprinkler systems and (iii) alleys are a minimum 22 feet wide.

11. NO LIABILITY IN PYDLLC FOR WORK DONE BY THIRD PARTIES

The City and APSLP, individually and on behalf of the Company, hereby expressly acknowledge that PYDLLC accepts no liability for the work of third party contractors. The City and APSLP, individually and on behalf of the Company, hereby waive any and all rights it might have against PYDLLC for all work done or supposed to have been done by third parties relative to Community Facility. In the event that third party work is found to be defective, and the defective work was performed pursuant to a contract between PYDLLC and a contractor, PYDLLC shall assign to the Company whatever remedies the contract provides for such defective work. Notwithstanding the aforesaid, there is no waiver of PYDLLC liability for the Development Work.

12. ASSIGNMENT

This Agreement shall be binding on, and inure to the benefit of, the parties hereto, their successors, heirs, and permitted assigns. This Agreement and the obligations of the Parties hereunder are intended to run with the land as to the Community Facility Parcel and Landbay H & Partial I (to the extent that it is owned by a builder/developer and not by individual homeowners or end-use business users).

13. This Agreement, including Exhibits _____, contains the entire agreement between the Parties regarding the subject matter herein and shall not be amended except by a writing signed by the Parties.

14. In the event that, for any reason, a section or provision of this Agreement should be held invalid or otherwise unenforceable, it is agreed the same shall not affect any other section or provision of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

15. No waiver or a breach or default of this Agreement shall be deemed a waiver of any subsequent breach or default.

16. This Agreement, including its interpretation, performance, or breach, shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without giving any force or effect to the provisions of any conflict of law rule thereof. The parties agree that any controversy or dispute arising out of or otherwise

related to this Agreement shall be tried exclusively in the state courts of the City of Alexandria or the United States District Court for the Eastern District of Virginia, Alexandria Division, as appropriate.

17. Notice Addresses (which are subject to change upon written notice to the other Parties):

PYDLLC: Potomac Yard Development LLC
c/o Centex Homes
3684 Centerview Drive, Suite 100
Chantilly, VA 20151

Copy to: Potomac Yard Development LLC
c/o Pulte Home Corporation
10600 Arrowhead Drive, Suite 225
Fairfax, VA 22030

The City: City of Alexandria, Office of Housing
Attention: Mildrilyn Stephens Davis, Director
421 King Street, Suite 200
Alexandria, VA 22314

With a copy to:
Ignacio B. Pessoa, City Attorney
301 King Street, Suite 1300
Alexandria, VA 22314

APSLP: Alexandria Potomac Station Limited Partnership
Daniel R. Abramson, President
504 Wythe Street
Alexandria, VA 22314

With a copy to:
Craig A. Emden, Esq.
Bocarsly Emden Cowan Esmail Parker & Arndt LLP
7200 Wisconsin Avenue – Suite 900
Bethesda, MD 20814

Witness the following signatures and seals:

Exhibit A	Accounting
Exhibit B	Preliminary Budget
Exhibit C	Construction Manager At-Risk Contract